

### **REMARKS**

Claims 1-30 are now pending in this application. Claims 1 and 9 are independent. Claims 1, 9, 13-17, and 19-21 have been amended, claims 27-30 have been added, and no claims have been canceled by this Amendment.

No new matter is involved with any claim amendment or new claim, as support may be found throughout the originally-filed disclosure.

### **Anticipation Rejection by Handler**

Withdrawal of the rejection of claims 1-6, 10-12, 14, 16, 17-21, and 24-26 under 35 U.S.C. §102(b) as allegedly being anticipated by Handler (US 5,613,517) is requested. The applied art does not disclose each of the claimed limitations, particularly as amended.

Applicants note that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.<sup>1</sup> There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.<sup>2</sup> To properly anticipate a claim, the reference must teach every element of the claim.<sup>3</sup> “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”.<sup>4</sup> “The identical invention must be shown in as complete detail as is contained in the ...claim.”<sup>5</sup> In determining anticipation, no claim limitation may be ignored.<sup>6</sup> In view of the foregoing authority, the cited reference fails to anticipate independent claim 1, as amended.

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<sup>1</sup> *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

<sup>2</sup> *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

<sup>3</sup> See MPEP § 2131.

<sup>4</sup> *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>5</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

<sup>6</sup> *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990).

### ***Discussion of Applicants' Disclosure***

By way of background, one or more embodiments of Applicants' disclosure are directed to a nozzle arrangement adapted for use with a pressurized vessel or container, e.g., an aerosol canister, and is particularly suitable for use in dispensing expandable products such as shaving foam and the like, although it can be used with other products. One feature of the disclosed and claimed invention is that the deformable wall extends over and closes substantially the entire length of the fluid flow passage from the inlet to the final outlet. This arrangement minimizes the dead space left in the fluid flow passage between actuations, and forces any fluid present in the passage when the resilient wall closes to be expelled through the outlet or forced back into the inlet region. This helps prevent beads of material forming at the outlet after actuation and also reduces the amount of material present in the fluid flow passageway which may harden or contaminate fluid dispensed during subsequent actuations.

### ***Discussion of Handler***

According to its Abstract, Handler is purportedly directed to a linear sheath valve having a valve platform and a conforming cover. The valve platform can have inlet and outlet channels to carry liquid into and out of the valve. An elastomeric membrane is held under tension between the cover and the valve platform so as to control the flow of liquid between channels. The cover includes an expansion area on the cover surface adjacent to the membrane and between the inlet and outlet. Liquid can flow through the valve only when it is under sufficient pressure to press the membrane into the expansion area, creating a flow path from the inlet between the membrane and the valve platform and to the outlet. Discontinuance of the pressure on the liquid allows the membrane to seal the inlet and outlet, thus preventing any flow between them.

In contrast with the nozzle in the present application, Handler discloses a one-way valve *which, as can be seen clearly in FIG. 2, closes only a small part of the passageway from the pump chamber to the outlet 9. As a result, significant dead space is left in the fluid flow passageway in which fluid may be retained which fluid may continue to expand and/or*

**harden**, causing at least some of the problems associated with conventional approaches, as discussed in Applicants' disclosure.

It is also noted that Handler relates to a valve for use in a manual pump action dispenser rather than a nozzle for use with a pressurized container. As a result, ***the actuator 15 as identified by the Examiner is not adapted, upon operation, to engage and open an outlet valve of the pressurized vessel or container to which the arrangement is attached, as is required in present claim 1.*** For this additional reason, previously-presented and currently amended claim 1 is submitted as being novel over Handler.

### ***Specific Deficiencies of the Applied Art***

Handler does not disclose a nozzle arrangement ***adapted to be fitted to a pressurized vessel or container and to permit fluid present in said vessel or container to be dispensed therethrough under pressure***, wherein the nozzle arrangement includes, *inter alia*, "***...a resiliently deformable wall member...wherein the resiliently deformable wall member defines a substantial portion of the length of the internal fluid flow passageway***, wherein, in response to an actuation of the actuator portion that causes fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway, ***the resiliently deformable wall member undergoes a resilient deformation between an initial resiliently-biased configuration in which at least a portion of the internal fluid flow passageway is closed and a distended configuration that allows fluid to flow through said at least a portion of the internal fluid flow passageway and be dispensed through the outlet, wherein, in response to a deactivation of the actuator portion that stops fluid present in the pressurized vessel or container from being released into the internal fluid flow passageway, the resiliently deformable wall member reverts to the initial resiliently-biased configuration such that any fluid remaining in the substantially entire length of the passageway is caused to be expelled,***" as recited in independent claim 1, as amended (***emphasis*** added).

Accordingly, since Handler does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claim 1 are respectfully requested. In addition,

dependent claims 2-8 and 10-16 variously and ultimately depend from this patentable independent claim, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

### **Anticipation Rejection by Gueret**

Withdrawal of the rejection of claims 1-6 and 10-26 under 35 U.S.C. §102(b) as allegedly being anticipated by Gueret is requested. The applied art does not disclose each of the claimed limitations, particularly as amended. The legal requirements for anticipation have been stated above.

### ***Discussion of Gueret***

According to its Abstract, Gueret is purportedly directed to a unit for dispensing at least one fluid product, in particular a cosmetic or pharmaceutical product. The unit comprises at least one dispensing duct, each comprising at its end portion a closing system opening towards the outside. The closing system is formed by an obturator which forms part of a component made of an elastically deformable material and a seat which forms part of another component of the dispensing head. The obturator is in contact with its associated seat in the absence of any dispensing action, moving away from the seat by elastic deformation under the pressure of the product to be dispensed, and returning by elasticity into contact with the seat when the dispensing stops. The obturator is subjected to the action of a constraining element tending to keep it applied to the seat wherewith it cooperates.

Gueret discloses a number of nozzle arrangements which are closed only at the outer end of fluid passageway adjacent the final outlet between actuations. In the embodiment shown in Figure 11 referred to by the Examiner, the outer edge 704A of the dispensing opening serves as a seat 6 ) or a lip 705A of the resilient strip 705 (see column 13 at lines 15 to 19). ***Thus the arrangement only seals the very outer end of the fluid flow passage such that there is a large volume of dead space in the remainder of the passageway***, similar to the problems with the conventional approaches discussed in Applicants' disclosure.

In stark contrast, in Applicants' nozzle, *the resilient wall extends over the majority or substantial portion of the passageway so that when it closes, the volume of the passageway is significantly reduced.*

### ***Specific Deficiencies of Gueret***

Gueret does not disclose a nozzle arrangement adapted to be fitted to a pressurized vessel or container and to permit fluid present in said vessel or container to be dispensed therethrough under pressure, wherein the nozzle arrangement includes, *inter alia*, "...a resiliently deformable wall member...wherein the resiliently deformable wall member defines a substantial portion of the length of the internal fluid flow passageway, wherein, in response to an actuation of the actuator portion that causes fluid present in the pressurized vessel or container to be released into the internal fluid flow passageway, the resiliently deformable wall member undergoes a resilient deformation between an initial resiliently-biased configuration in which at least a portion of the internal fluid flow passageway is closed and a distended configuration that allows fluid to flow through said at least a portion of the internal fluid flow passageway and be dispensed through the outlet...", as recited in independent claim 1, as amended (*emphasis added*).

Accordingly, since Gueret does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claim 1 are respectfully requested. In addition, dependent claims 2-8 and 10-16 variously and ultimately depend from this patentable independent claim, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

### **Allowable Subject Matter**

Applicants note with appreciation the indication that claims 7-9 are drawn to allowable subject matter and would be allowed if rewritten in independent form.

In reliance upon the indication of allowable subject matter, the allowable subject matter of dependent claim 9 has been rewritten into independent form. Allowance of claim 9 is requested.

### **New Claims**

Newly-presented dependent claims 27-30 have been drafted to further define that which Applicants are entitled to claim. No new matter is involved with any new claim, as support may be found throughout the originally-filed disclosure. Consideration and allowance of claims 27-30 are respectfully requested.

### **Conclusion**

All rejections having been addressed, Applicant submits that each of pending claims 1-30 in the present application is in immediate condition for allowance. An early indication of the same would be appreciated.

Applicants have amended claim 9 into independent form, but are not conceding in this application that claim 1 as originally presented is not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for clarifying the recitations and for facilitating expeditious prosecution of the allowable subject matter noted by the Examiner.

In the event the Examiner believes that an interview would be helpful in resolving any outstanding issues in this case, the Undersigned Attorney is available at the telephone number indicated below.

Application Serial No.: 10/525,200  
Attorney Docket No. 040432-0314787  
Response to Non-Final Office Action mailed March 19, 2008

For any fees that are due, including fees for excess claims and/or extensions of time, please charge Deposit Account Number 03-3975 from which the Undersigned Attorney is authorized to draw. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Date: May 20, 2008

Respectfully submitted,

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